LAW REVIEW 1; 1 Ill. Law Review 548. It has been stated that the rule of mutuality has no application here. *Sutherland* v. *Briggs* (1841) 1 Hare 26. It is admittedly difficult to distinguish the situation under discussion from a case of hardship where one party may enforce a contract and the other cannot. But were the mere presence of an equity in one party's favor, *ipso facto*, to take the case beyond the purview of the rule of mutuality, a doctrine would exist both difficult in its enforcement and dangerous to the continuance of the rule.

The remaining condition necessary to support this jurisdiction—that the defect must be measurable in money—is based on the conception that otherwise equity in its endeavor to do right might well work injustice. Where the difficulty arises as to defects of title, *Seaman* v. *Vaudrey* (1809) 16 Ves. 390, a reasonable estimate must suffice because an accurate estimate is impossible. (Compensation allowed) *Ramsden* v. *Hirst* (1858) 4 Jur. (N. S.) 200; (compensation refused) *Cato* v. *Thompson* (1882) 9 Q. B. D. 616. Because of the inherent difficulty of estimation, courts are divided as to awarding compensation for inchoate dower rights, see *Wilson* v. *Williams* (1857) 3 Jur. (N. S.) 810; contra, *Riesz's Appeal* (1873) 73 Pa. St. 485. If the vendee knew, however, of the vendor's marriage, compensation is always refused. *Lucas* v. *Scott* (1885) 41 Oh. St. 636; cf. *Emery* v. *Wase* (1803) 8 Ves. 505. As to defects in the quantity of land the measure of abatement generally followed, *Powell* v. *Elliott* (1866) L. R. 10 Ch. App. 424, is that adopted by a recent decision: *Baldwin* v. *Brown* (Wash. 1908) 93 Pac. 413: such proportion of the total purchase price will be deducted as the value of such proportion bore to the value of the entire tract at the time of purchase. The difficulties of estimation in cases of defect in quantity will rarely be as great as those recognized as not insuperable in cases of defect in quality, and hence in the former cases the vendee may nearly always obtain specific performance with compensation.

THE RIGHT OF A PERSONAL REPRESENTATIVE TO SUE FOR DEATH BY WRONGFUL ACT.—The common law rule, forbidding the maintenance of an action for injuries resulting from homicide, Burdick, Law of Torts 230, has been generally abrogated by statutes, see Tiffany, Death by Wrongful Act, which usually create a new cause of action, 5 COLUMBIA LAW REVIEW 545, to recover damages for the injuries sustained by certain beneficiaries. *Matter of Meekin* v. *Brooklyn etc. R. R. Co.* (1900) 164 N. Y. 145; *Holton* v. *Daley, Adm.* (1882) 106 Ill. 131. This right of action accrues whenever the wrongful act occurs within an actual, *Whitford* v. *Panama R. R. Co.* (1861) 23 N. Y. 465, or constructive jurisdiction, *McDonald* v. *Mallory* (1879) 77 N. Y. 546, subject to such a statute; and it is immaterial where the death took place, *Needham, Admx.* v. *Grand etc. Ry. Co.* (1865) 38 Vt. 294. The deceased, though instantly killed, cf. *Higgins* v. *Central etc. R. R. Co.* (1892) 155 Mass. 176, must have been entitled to maintain an action at the time of his death. *Hecht* v. *Ohio etc. Ry. Co.* (1892) 132 Ind. 507. Furthermore the right vests in the personal representative of the deceased who for purposes of suit is the owner of the claim. *Usher* v. *West Jersey R. R. Co.* (1889) 126 Pa. St. 206. Since the right is statutory these limiting conditions will be recognized by foreign tribunals as inseparable from it. 7 COLUMBIA LAW REVIEW 553. Consequently for jurisdictional purposes, though the beneficiaries may release their interests, *Pitts-*

burg etc. Ry. Co. v. *Hasea, Adm.* (1898) 152 Ind. 412, it is immaterial whether they are residents of the forum, of a sister state, *Robertson, Admx.* v. *Chicago etc. Ry. Co.* (1904) 122 Wis. 66, or, on principle, are non-resident aliens. *Davidson* v. *Hill* [1901] 2 K. B. Div. 606; *Romano* v. *Brick & Pipe Co.* (1904) 125 Ia. 519; cf. 3 COLUMBIA LAW REVIEW 492; contra, *Deni* v. *Pennsylvania Ry. Co.* (1892) 181 Pa. St. 525. It is essential therefore, to determine what personal representative the legislature of the *locus delicti* intended, cf. *Taylor's Adm.* v. *Pa. etc. Co.* (1880) 78 Ky. 348, since administration may be obtained not only in the jurisdiction where the deceased was domiciled, *Holburn* v. *Pfanmiller's Adm.* (1903) 114 Ky. 831, but also wherever there are assets. *McCully* v. *Cooper* (1896) 114 Cal. 258; cf. *Christy* v. *Vest* (1873) 36 Ia. 285; see 1 Williams, Executors (7th Am. Ed.) 482, note. To sustain a grant of administration in the former case the existence of assets is unnecessary, *Holburn* v. *Pfanmiller's Adm., supra,* and in the latter the existence of an otherwise unenforcible claim therein is generally held sufficient, *Richards* v. *Iron Works* (1904) 56 W. Va. 510; *Morris* v. *Chicago etc. Ry. Co.* (1885) 65 Ia. 727; contra, *Perry, Adm.* v. *St. Joseph etc. Ry. Co.* (1883) 29 Kan. 420; cf. Brown's *Adm.* v. *Louisville etc. R. R. Co.* (1895) 97 Ky. 229; *Jeffersonville etc. R. R. Co. v. Swayne's Adm.* (1866) 26 Ind. 477, though the beneficial interest is in special parties. *Sargent* v. *Sargent* (1897) 168 Mass. 420; *Findlay* v. *Chicago etc. R. R. Co.* (1895) 106 Mich. 700. While thus there may be several administrators, all are independent, *Keaton's Distributees* v. *Campbell* (Tenn. 1840) 2 Hump. 224; *Stevens* v. *Gaylord* (1814) 11 Mass. 256, except that the ancillary administrator must, in the discretion of the court pay any surplus to the domiciliary representative, *Fretwell* v. *McLemore* (1875) 52 Ala. 124; *Young* v. *Wittenmyre* (1888) 123 Ill. 303, and that a foreign domiciliary representative, though authorized to sue by statute, sues subordinately to the local administrator. *Boughton* v. *Bradley* (1859) 34 Ala. 694; *McCully* v. *Cooper, supra.* These exceptions do not affect the several representatives' general independence. Consequently, since the statute designates no specific representative, it is reasonable to construe the statute as vesting the right to sue in any duly authorized representative. *Dennick* v. *Railroad Co.* (1880) 103 U. S. 11; *Leonard* v. *Columbia etc. Co.* (1881) 84 N. Y. 48; *Bolden* v. *Pennsylvania R. R. Co.* (1903) 205 Pa. St. 264; contra, *Richardson* v. *New York etc. R. R. Co.* (1867) 98 Mass. 85.

It is patent that a representative appointed in the *locus delicti* may recover therein. And by the great weight of authority a domiciliary representative may sue in the jurisdiction of his appointment upon a cause of action that accrued abroad. *Nelson, Adm.* v. *Chesapeake etc. R. R.* (1892) 88 Va. 971; *Leonard* v. *Columbia etc. Co., supra; Dennick* v. *Railroad Co., supra;* contra, *Woddard, Admx.* v. *Michigan etc. R. R.* (1859) 10 Oh. St. 121. But the authorities are irreconcilable where a foreign representative seeks to enforce the right. In the first case the representative acts *de jure;* in the latter two he is allowed to maintain the action only by comity. On this ground the right given by the statute of the *locus delicti, Whitford* v. *The Panama R. R. Co., supra; Memphis etc. Co.* v. *Pikey, Adm.* (1895) 142 Ind. 304, though not its procedure, *Wooden* v. *Western etc. R. R. Co.* (1891) 126 N. Y. 10; *Knight* v. *West Jersey R. R. Co.* (1885) 108 Pa. St. 250, will be recog-

nized when the statute is not penal, *Raisor* v. *Chicago etc. Ry.* (1905) 215 Ill. 47, and is similar to that of the forum. *Stewart* v. *B. & O. R. R.* (1897) 168 U. S. 445; 4 COLUMBIA LAW REVIEW 503. It is generally, however, considered impolitic to allow a foreign representative to sue, *Maysville etc. Co.* v. *Wilson's Adm.* (1893) 16 U. S. App. 236; *S. W. R. R.* v. *Pulk* (1858) 24 Ga. 356; *Denny* v. *Faulkner* (1879) 22 Kan. 90; see 1 Woerner, Am. Law of Admin., § 162. In applying this rule of policy, two theories of the administrator's status are advanced. Under one, the representative is considered as acting *virtute officii,* though not for the general estate; he must therefore obtain letters of administration in the forum, *Richards* v. *Iron Works, supra; S. C. R. R. Co.* v. *Nix, Adm.* (1882) 68 Ga. 572, which will be granted as matter of course, *Hartford etc. R. R.* v. *Andrews* (1869) 36 Conn. 213, or on grounds of assets or domicile. See *supra.* Under the other the statute is considered as imposing a trust upon him who shall be personal representative; as trustee he may therefore maintain the action *de jure. Boulden* v. *Pennsylvania R. R. Co., supra; Jeffersonville etc. R. R.* v. *Swayne's Adm., supra.*

The Supreme Court of Rhode Island has recently adhered to this latter theory in *Connor* v. *New York etc. Ry. Co.* (1908) 68 Atl. 482, holding unanimously that a domiciliary administrator of the *locus delicti,* Connecticut, could sue as trustee in Rhode Island. Neither theory contravenes the rule regarding extraterritorial power of a representative, and both make possible substantially the same conflicts. These, however, are unimportant since a release by one representative is binding upon all in the absence of fraud. *Pisana* v. *Shanley Co.* (1901) 66 N. J. L. 1; *Nelson* v. *Chesapeake etc. R. R. Co., supra,* 978. Moreover the rights of citizens, cf. 6 COLUMBIA LAW REVIEW 521; and see *Putnam* v. *Pitney* (1891) 45 Minn. 242, could be about as well protected by the extensive power of the court over the administrator as trustee as by the requirement of ancillary administration in the forum. Accordingly the greater convenience insured by the absence of this requirement as well as the greater logic in regarding the representative as trustee, since he does not act on behalf of the estate, warrants the rule of the principal case.

FRAUD IN CORPORATE MANAGEMENT AND THE RIGHTS OF A MINORITY STOCKHOLDER.—The doctrine frequently asserted, that equity protects the minority stockholder, may be stated to comprehend a right to an accounting or an injunction with respect to transactions *ultra vires* or amounting to a breach of trust. The plaintiff must be a bona fide stockholder; *Robson* v. *Dobbs* (1869) L. R. 8 Eq. 301; *Belmont* v. *Erie R. R. Co.* (1869) 52 Barb. 637; he must generally show special injury where the transaction is not *ultra vires; Hill* v. *Nisbet* (1884) 100 Ind. 341; *Hedges* v. *Paquett* (1869) 3 Ore. 77; and, the corporation being a trustee for the stockholders, in most cases he must allege and prove that the corporation is unwilling or unable to bring suit. *Hawes* v. *Oakland* (1881) 104 U. S. 450; *Greaves* v. *Gouge* (1877) 69 N. Y. 154; *Dumphy* v. *T. N. Assn.* (1888) 146 Mass. 495. But when the transaction is *ultra vires, Stebbins* v. *Perry County* (1897) 167 Ill. 567, *Botts* v. *Simpsonville etc. Turnp. Co.* (1888) 88 Ky. 54, or the corporation is under the control of the guilty parties, *Brewer* v. *Boston Theatre* (1870) 104 Mass. 378; *Wickersham* v. *Crittenden* (1892)